

STEPHEN A. HILDEBRANDT
Chief Counsel

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GROUP
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WESTINGHOUSE BROADCASTING COMPANY, INC.
1025 CONNECTICUT AVENUE, N.W., SUITE 506
WASHINGTON, D.C. 20036-5406 (202) 857-5155

January 19, 1993

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Mail Stop Code 1170
Washington, D.C. 20554

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JAN 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Westinghouse Broadcasting Company Inc.'s
Reply Comments in MM Docket No. 92-259**

Dear Ms. Searcy:

Enclosed for filing with the Commission is an original and nine (9) copies of Westinghouse Broadcasting Company, Inc.'s Reply Comments regarding the Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, MM Docket 92-259.

Should there be any questions in connection with these Comments, please contact the undersigned.

Respectfully submitted,



Stephen A. Hildebrandt
Chief Counsel

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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JAN 19 1993

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of

Implementation of the Cable Television)
Consumer Protection and Competition)
Act of 1992)

MM Docket No. 92-259

Broadcast Signal Carriage Issues)

To The Commission

**REPLY COMMENTS OF
WESTINGHOUSE BROADCASTING COMPANY, INC.**

Westinghouse Broadcasting Company, Inc., ("Group W") by its attorneys, hereby files Reply Comments in response to the Notice of Proposed Rule Making ("Notice") in the above captioned matter. Group W is a licensee of five major market television stations¹ and, as a television broadcaster, is interested in the effective implementation of the Must-Carry and Retransmission Consent provisions of the Cable Television Consumer Protection and Competition Act of 1992. Group W is also, through its Group W Satellite Communications Division, a distributor of cable television programming, such as The Nashville Network and County Music Television. Therefore, Group W is also concerned that new rules not be unduly burdensome on the cable business which provides an important service to American consumers. Balancing these concerns should be an important public interest goal of these proceedings.

¹ KYW-TV, Philadelphia, Pennsylvania; KPIX, San Francisco, California; WBZ-TV, Boston, Massachusetts; KDKA-TV, Pittsburgh, Pennsylvania; and WJZ-TV, Baltimore, Maryland.

Group W firmly believes that the broadcast signal carriage provisions of the Act create new opportunities for broadcasters and cable operators to work together in ways to ultimately benefit the public. The assurance of carriage or the ability to negotiate for an additional revenue stream will remove a significant impediment to the ability of over-the-air free broadcasters to compete fairly and fully with other video distribution systems. The rights created by retransmission consent, particularly, will encourage broadcasters and cable operators to engage in a dialogue of cooperation rather than animosity as they both work to provide the best and most popular programming service to the television audience in their community. In addition to a possible new revenue stream for broadcasters, joint ventures between the two industries on the local level will be good business for them and result in better service to the public.

Group W has reviewed the comments filed in this proceeding and believes the public would be best served by minimal Commission regulation in implementing the Act's clear directions. While the Act's intent to protect the rights of broadcasters must be forcefully implemented, the Commission should allow the marketplace to develop and work out as many issues as possible within the basic statutory framework. This is particularly relevant in the retransmission consent area where the Commission is being asked by some programmers to go beyond the requirements of the Act and legislate the components of programming contracts. Such action can not be supported by the law or by the public interest. This issue will be a primary focus of these Comments. In the must-carry arena, the Commission's general goal should

be to adopt rules which are as simple as possible to interpret and administer so as to minimize the burden on both broadcasters and cable operators. For example, Group W supports the concept of a must-carry default provision if a retransmission consent election is not made. Other issues will be discussed below.

MUST-CARRY ISSUES

With an eye toward simplicity of administration, while at the same time protecting broadcaster rights, Group W supports the following positions raised in the Comments on implementation of must-carry:

1. Location of Cable System.

A cable system's location for purposes of the Act should be the entire geographic area served by the cable system. The intent of Congress is clear that stations are entitled to carriage throughout their ADIs. If a cable system is located in more than one ADI, the Commission should treat stations in both ADIs as qualified for must-carry status, or, at least, require the cable system to treat each system segment separately for must-carry purposes. Under no circumstances should cable systems be allowed to eliminate one market's must-carry status.

In Paragraph 17 of the Notice, the Commission suggests that a system's principal headend location might be an appropriate basis for determining the system's location for must-carry purposes. While such a basis would be convenient for cable operators, this would deprive stations of the must-carry status Congress intended to confer upon them. A cable

operator's decisions as to how to technically configure its system cannot be the ruling force to prevent stations from being carried in their own markets as the Act clearly provides in Section 614 (h)(1)(A) and 614 (h)(1)(C).

2. ADI Changes.

For ease of administration and compliance, the Commission should recognize ADI changes only once every three years at a time which would coincide with the must-carry/retransmission election by broadcast stations. This will allow both cable systems and television stations to plan ahead in a reasonable manner. While occasional marketplace changes in ADI will allow this definitional tool to remain flexible over the years, some certainty is necessary where statutory rights are dependent on the definition. Freezing ADI listings for the three year election periods is a reasonable and necessary procedure for achieving the purposes of the Act without unduly upsetting business planning cycles.

3. Channel Position.

Section 614 (b)(6) of the Act clearly provides that it is broadcast stations, not cable systems, which can choose between the three alternatives for channel position status delineated therein. In establishing priority among stations with conflicting rights and requests, the Commission should give a clear first priority to a station's on-the-air channel position. This is the alternative which would generally be least confusing to the public and most important to a station. Typically, a station uses its over-the-air channel to identify itself several times per hour on the air and as an important part of other station promotional activities.

It should also be made clear that a station does not lose its channel position priority just because it elects retransmission consent over must-carry. While channel position may be a subject of negotiation in the retransmission consent bargaining process, a local station should not lose the ability to obtain through negotiation its on-air channel position just because a must-carry station in the market is seeking that channel position pursuant to a lesser of the three legislative criteria. The right to grant retransmission consent should not come laden with such a significant possible detriment. Group W is not suggesting an interpretation of the Act which guarantees must-carry-type channel position rights when a station elects retransmission consent. It is only asking the Commission to insure that the right to *bargain* for the all-important over-the-air channel position is not lost due to the assertion of a lesser priority channel position right by a station selecting must-carry status.

RETRANSMISSION CONSENT ISSUES

1. Copyright Issues.

There is no question that the Act provides for a retransmission consent right for broadcasters totally independent of any copyright interests in a broadcaster's programming. Programmers would have the Commission believe that a terrible injustice has been done and that broadcasters will be collecting money pursuant to retransmission consent which rightfully should go to producers. However, the legislative history is clear that these copyright issues were considered by the Congress and rejected. Retransmission consent is a right which only the television station can grant and Commission

regulation of this right should not require any special showing of consent or approvals from program copyright holders.

The language of the Act on retransmission consent is clear. It requires the express authority of “the originating *station*” for a cable system or other multichannel video programming distributor to retransmit “the *signal* of any broadcasting station, or any part thereof.” 47 U.S.C. Section 325 (b)(1)(A).

The retransmission consent right is given to *stations* only. It is a right related to their *signals*, not their programming. No other consent is required. Congress could have granted similar rights to the copyright owners of the programs, but chose not to. Since Congress intended to give broadcasters a new right, no other consent requirement can or should be implied by the Commission. Forcing broadcasters to negotiate for the right to grant retransmission consent would seriously undercut the benefit which Congress intended.

In the real world of television program negotiation, broadcasters and programmers reach a price based on a number of different criteria. One of the primary criteria is the overall financial strength of the station and the expected contribution of the program to the station’s revenue picture. All of these revenues are considered in the final price negotiation, but are not negotiated as individual elements of programming contracts. Retransmission consent fees will simply be part of this overall revenue stream to the station - much the same as advertising revenues - and, as such, will automatically be considered in the ultimate price negotiation between broadcasters and programmers. If a station is stronger financially because of retransmission fees, a programmer should expect to get a better price.

In other words, the issue of unfairness to program producers is basically a red herring since they will have every opportunity to negotiate for a better price if a station is receiving substantial retransmission consent revenues in addition to its advertising revenues. There is no need for the Commission to interfere. The *marketplace* will insure that all parties are appropriately compensated.

Moreover, if a producer feels aggrieved by a particular situation, the Act specifically does not affect its ability to pursue its copyright rights in a judicial forum. There is no reason for the Commission to be involved except to enforce a broadcaster's exclusive statutory right to control retransmission of its signal by third party cable systems and other multichannel video providers. For all of these reasons, the Commission should make absolutely clear that retransmission consent permission is not needed from program providers in order for broadcasters to exercise their rights under the Act.

2. Retransmission Election Procedures.

For reasons of administrative efficiency and appropriate transition of service to the public, a deadline for retransmission election of approximately 60 days prior to the October 6, 1993 statutory date would be reasonable and appropriate. The Commission should at least establish such a proposed procedure on a voluntary basis, urging compliance for the benefit of all affected parties.

It would also be reasonable for the Commission to establish must-carry as a default position for broadcasters who do not make the retransmission consent election. This would be the simplest procedure administratively and eliminate numerous potential disputes concerning notice and delivery. It also places the responsibility on broadcasters who elect retransmission consent to


make sure that all affected cable systems receive notice of their election. This is reasonable and places the responsibility where it should lie, i.e. with the broadcaster seeking the benefit.

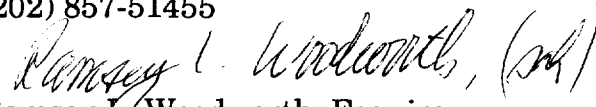
CONCLUSION

The public, the broadcasting industry, and the cable industry will be well served if the Commission adopts must-carry regulations which are simple, clear, and require minimal notice and record keeping obligations. Similarly, the public, the broadcast industry, and the cable industry will be well served by minimal retransmission consent regulations which leave the parties free to negotiate these rights in the marketplace. Free market negotiations will also ultimately satisfy the concerns of copyright holders who will benefit from the increased revenues coming to television station purchasers of their products.

Respectfully submitted,

Westinghouse Broadcasting Company, Inc.


Stephen A. Hildebrandt, Esquire
Chief Counsel
Westinghouse Broadcasting Company, Inc.
1025 Connecticut Avenue, N.W.
Suite 506
Washington, D.C. 20036
(202) 857-51455


Ramsey L. Woodworth, Esquire
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W.
Washington, D.C. 20006
(202) 457-7874
Its Counsel

January 19, 1993